

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANDREW J. WAHOLEK,	)	
	)	
Plaintiff,	)	2:20-cv-1894
	)	
vs.	)	
	)	District Judge Robert J. Colville
PENNSYLVANIA PAROLE BOARD and	)	Magistrate Judge Maureen P. Kelly
MARK CABONEY, Hearing Examiner.	)	
	)	Re: ECF Nos. 5 and 10
Defendants.	)	

**ORDER OF COURT**

Before the Court is the Honorable Maureen P. Kelly's February 22, 2021 Report and Recommendation (ECF No. 13), which recommends: (1) that Plaintiff's claims arising under 42 U.S.C. § 1983 be dismissed with prejudice sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B); (2) that the Court decline, under 28 U.S.C. § 1367(c)(3), to exercise supplemental jurisdiction over any potentially asserted state law claims, and that the Court dismiss such claims without prejudice to Plaintiff's filing such claims in state court; (3) that dismissal should not be made with prejudice with respect to Plaintiff's right to raise a separately filed habeas corpus claim, to the extent that relief under habeas remains available to him, or to the refiling of his potential state law claims in state court; and (4) that the Court deny Plaintiff's Motion for Preliminary Injunction (ECF No. 5). Objections to Judge Kelly's Report and Recommendation were due by March 11, 2021. No objections were filed, and the matter is now ripe for disposition.

With respect to dispositive matters, the reviewing district court must make a de novo determination of those portions of the magistrate judge's report and recommendation to which objections are made. 28 U.S.C. § 636(b)(1)(B)-(C); Fed. R. Civ. P. 72(b)(3). "The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the

matter to the magistrate judge with instructions.” Fed. R. Civ. P. 72(b)(3). The United States Court of Appeals for the Third Circuit has explained that, “even absent objections to the report and recommendation, a district court should ‘afford some level of review to dispositive legal issues raised by the report,’” and has “described this level of review as ‘reasoned consideration.’” *Equal Employment Opportunity Comm’n v. City of Long Branch*, 866 F.3d 93, 100 (3d Cir. 2017) (quoting *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987)).

Upon consideration of Judge Kelly’s February 22, 2021 Report and Recommendation and upon review of the record in this matter, it is hereby ORDERED as follows:

The Court accepts and adopts Judge Kelly’s Report and Recommendation in its entirety as the opinion of the Court. Plaintiff’s claims arising under 42 U.S.C. § 1983 are dismissed with prejudice sua sponte pursuant to 28 U.S.C. § 1915(e)(2)(B). This Order is entered without prejudice with respect to Plaintiff’s right to raise a separately filed habeas corpus claim, to the extent that relief under habeas remains available to him. To the extent that Plaintiff attempts to raise claims under state tort law, the Court declines, pursuant to 28 U.S.C. § 1367(c)(3), to exercise supplemental jurisdiction over such claims, and such claims are dismissed without prejudice to Plaintiff’s refiling those claims in state court, if appropriate. Plaintiff’s Complaint (ECF No. 10) is dismissed. Plaintiff’s Motion for Preliminary Injunction (ECF No. 5) is denied. The Clerk of Courts shall mark this case as CLOSED.

BY THE COURT:

s/Robert J. Colville  
Robert J. Colville  
United States District Judge

DATED: March 19, 2021

cc: Honorable Judge Maureen P. Kelly  
United States Magistrate Judge

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